

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----	X	08-Civ.1297 (SLT) (SMG)
JOHNSON & JOHNSON AND LIFESCAN, INC.,	)	
	)	
Plaintiffs,	)	<b>DEFENDANTS MSI</b>
	)	<b>MEDICAL SUPPLY AND</b>
- v -	)	<b>MICHAEL BARBA</b>
	)	<b>ANSWER TO CROSS</b>
	)	<b>CLAIMS OF</b>
SOUTH POINTE WHOLESALE, et al	)	<b>DEFENDANTS STERLING</b>
	)	<b>WHOLESALE, LLC and</b>
Defendants.	)	<b>JEFFREY B. LITTMAN</b>
-----	X	

Defendants, MSI MEDICAL SUPPLY and MICHAEL BARBA (collectively the "Defendants") by their attorneys, LEWIS BRISBOIS BISGAARD & SMITH LLP, as and for their answer to the cross-claims contained in the September 18, 2009 Answer of Sterling Wholesale, LLC and Jeffrey B. Littman ("Sterling Defendants") to the Sixth Amended Complaint with Cross Complaints ("Cross Claims") in the above captioned action, allege upon information and belief as follows:

1. Defendants deny the allegations set forth in the First Cross Complaint of the Cross-Claims.
2. Defendants deny the allegations set forth in the Second Cross Complaint of the Cross-Claims.

**AFFIRMATIVE DEFENSES**

Defendants set forth the following affirmative defenses to the Cross Claims. In doing so, Defendants do not assume the burden of proof with respect to any of the affirmative defenses where the substantive law provides otherwise.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

The Sterling Defendants failed to state a claim upon which relief may be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

The Sterling Defendants' Cross Claims are barred because of their acts and conduct in permitting the ongoing alleged conduct.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

The Sterling Defendants' are barred because Defendants did not purchase from or sell to the Sterling Defendants any of the products at issue.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

The Cross-Claims are barred the doctrines of waiver and/or estoppel.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

The Cross Claims are barred to the extent that the Sterling Defendants' failed to mitigate damages.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

The Cross-Claims fail because, upon information and belief, the products at issue are not counterfeit.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

The Sterling Defendants' damages, if any, were not proximately caused by the Defendants.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE**

Any alleged loss or damage was the result of the Sterling Defendants' own acts, omissions and negligence, or was caused by the conduct and activities of persons or firms for whose acts, conduct and activities for which Defendants are not responsible.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

The Cross Claims are barred by the doctrine of unclean hands.

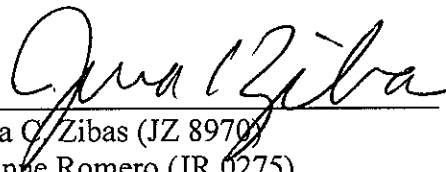
**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

The Cross Claims against Defendants fail because the Sterling Defendants lack privity with Defendants.

**WHEREFORE**, MSI MEDICAL and MICHAEL BARBA respectfully request that the Cross Claims of Sterling Wholesale LLC and Jeffrey B. Littman in the Answer to the Sixth Amended Complaint asserted against them be dismissed in their entirety and all relief requested therein be denied, and that the Court award Defendants attorneys fees and costs and such further relief as the Court deems just and proper.

Dated: New York, New York  
October 9, 2009

Respectfully submitted,



Jura C. Zibas (JZ 8970)

Joanne Romero (JR 0275)

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*Attorneys for MSI MEDICAL, INC.  
and MICHAEL BARBA*

TO: via ECF to all counsel

**File No. 50013-685 Johnson & Johnson and LifeScan, Inc. v. South Pointe Wholesale, Inc., et al., United States District Court, Eastern District of New York Case No. 08 CV 1297 (SLT)**

**CERTIFICATION OF SERVICE**

I hereby certify that on October 9, 2009, a true copy of the DEFENDANTS MSI MEDICAL SUPPLY INC. and MICHAEL BARBA'S ANSWER TO CROSS CLAIMS OF STERLING WHOLESALE, LLC AND JEFFREY B. LITTMAN, was filed electronically using the CM/ECF system of the Eastern District of New York Local Rules which will send a notification of such filing to registered counsel as service on such individuals.

  
JURA C. ZIBAS